

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SOUTH SIDE AREA SCHOOL DISTRICT, KNOCH SCHOOL DISTRICT, BETH ANN ROSICA, individually and as parent and natural guardian of [REDACTED], minors, AARON BERNSTINE, individually and as parent and natural guardian of [REDACTED], [REDACTED], minors, JASON SAYLOR, individually, and as parent and natural guardian of [REDACTED], a minor, BARBARA GLEIM, individually, ALEXANDRA PASTERNAK, individually, and as parent and natural guardian of [REDACTED], a minor,

Petitioners,

v.

OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION,

Respondents.

No.: _____

ORIGINAL JURISDICTION

PETITION FOR REVIEW

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NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must act within thirty (30) days after this Petition for Review and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

NOTICE TO PLEAD

TO: RESPONDENTS.

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

Respectfully Submitted,

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM, L.L.P.**

Dated: March 6, 2025

By: /s/ Thomas W. King, III

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OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA HUMAN RELATIONS COMMISSION,

Respondents.

PETITION FOR REVIEW

Petitioners, by and through the undersigned legal counsel, file the within Petition for Review against Respondents, averring in support thereof, as follows:

Introduction

This case challenges the “authority” relied upon by the Pennsylvania Human Relations Commission (“PHRC”) to promulgate Subchapter D – Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions. *16 Pa. Code §§ 41.201 – 41.207.*

In violation of the Pennsylvania Constitution, the PHRC has created a heretofore unimagined meaning of “sex” within the Commonwealth of Pennsylvania. Under the PHRC regulations, there are multiple classifications of persons such as males, females, nonbinary, heterosexual, homosexual, bisexual, or asexual individuals who by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation. *16 Pa. Code Part II, Subpt A. Ch 41, Subch D, Affectional or sexual orientation.*

By way of example, under the PHRC regulations, for sex discrimination purposes, a male, female or nonbinary individual’s sex is determined, at least in part, by the individual’s affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender

(heterosexual); affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender (*homosexual*); affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender (*bisexual*); or, their lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity (*asexual*). An individual's sex is no longer determined at birth based upon the individual's biological chromosomes and genitalia at birth.

Under the PHRC regulations, an individual's sex is determined at some undefined point in time after birth based at least in part upon personal attributes that make the individual unique, such as fundamental beliefs and values, personal characteristics, and physical or mental attributes; and/or the individual *having or being perceived* as having a gender-related identity, appearance, expression or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth. Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is part of a person's core identity. *16 Pa. Code § 41.204.*

Under the PHRC regulations, an individual's "sex" for purposes of a prima facie sex discrimination charge can change over time from the birth of

the individual through the individual's death depending upon the individual's "fundamental beliefs and values, personal characteristics, and physical or mental attributes." *16 Pa. Code § 41.204*.

Under the PHRC regulations, an individual's sex for purposes of a prima facie sex discrimination charge can change over time from the birth of the individual through the individual's death depending upon the accurate or perceived "gender-related identity, appearance, expression or behavior" of the individual. *16 Pa. Code § 41.204*. In order to establish the individual's sex, the individual is required to demonstrate "by consistent and uniform assertion" or "any other evidence" establishing the individual's sex. *16 Pa. Code § 41.204*.

Pursuant to the non-delegation Doctrine, the General Assembly is prohibited from granting or delegating "to any other branch of government or to any other body or authority" the power to make law. *Blackwell*, 567 A.2d at 636; *State Bd. of Chiropractic Exam'rs v. Life Fellowship of Pa.*, 441 Pa. 293, 272 A.2d 478, 480 (1971). The General Assembly is the sole branch of government vested with the authority "to make laws, and not to make legislators." John Locke, *Second Treatise of Government* 87 (R. Cox ed.1982). See *Dep't of Transp. v. Ass'n of Am. Rail-roads*, - U.S. -, 135 S.Ct. 1225, 1237, 191 L.Ed.2d 153 (2015) (Alito, J., concurring) ("The principle that Congress

cannot delegate away its vested power exists to protect liberty."); see *also* The Federalist No. 47, at 301 (J. Cooke ed. 1961) (J. *656 Madison) ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny.").

This does not mean that the General Assembly is unable to delegate to administrative agencies the authority to administer and/or execute the laws of the Commonwealth of Pennsylvania. To the contrary, numerous administrative agencies, commission and boards within the Commonwealth regularly exercise such authority consistent with the limitations and procedures established by the General Assembly. *Blackwell*, 567 A.2d at 637.

When the General Assembly delegates authority to administrative agencies, Pennsylvania's Constitution requires the General Assembly to make the policy decisions and to establish "adequate standards which will guide and restrain the exercise of the delegated administrative functions." *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 583 Pa. 275, 877 A.2d 383, 418 (2005); *State Bd. of Chiropractic Exam'rs*, 272 A.2d at 481 (quoting *Chartiers Valley Joint Sch. v. Cty. Bd. of Sch. Dirs. of Allegheny Cty.*, 418 Pa. 520, 211 A.2d 487, 492-93 (1965)).

The standards guiding and restraining the exercise of the delegated administrative authority are an essential protection against the arbitrary and

capricious exercise of the authority. *Tosto*, 331 A.2d at 203; see *W. Phila. Achievement Charter Elementary Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957, 966 (2016). Absent appropriate and meaningful standards to guide and restrain the exercise of the delegated administrative functions, the legislation violates the non-delegation Doctrine. *Protz v. Workers' Compen. App. Bd. (Derry Area Sch. Dist.)*, 161 A.3d 827, 833-35 (Pa. 2017).

Statement of Jurisdiction

1. This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1).

2. This action is in the nature of a Declaratory Judgment action pursuant to 42 Pa.C.S. § 7531, *et seq.*, *et al.*

Parties Seeking Relief

3. Petitioner, South Side Area School District, is a public school district organized and existing in accordance with the laws of the Commonwealth of Pennsylvania with its administrative offices located at 4949 State Routes 151, Hookstown, Beaver County, Commonwealth of Pennsylvania.

4. Petitioner, Knoch School District, is a public school district organized and existing in accordance with the laws of the Commonwealth of

Pennsylvania with its administrative offices located at 328 Knoch Road, Saxonburg, Butler County, Commonwealth of Pennsylvania.

5. Petitioners, South Side Area School District and Knoch School District are collectively referred to as “District Petitioners.” Petitioners’ programs, students, staff, and taxpayers are directly and adversely affected by virtue of the actions of Respondents described herein.

6. Petitioner, Beth Ann Rosica (hereinafter referred to as “Petitioner Rosica”), is an adult individual, parent and natural guardian of her minor children, [REDACTED] Petitioner’s minor children attend secondary schools within the Commonwealth of Pennsylvania. Petitioner Rosica resides with her minor children in Chester County, Commonwealth of Pennsylvania. Petitioner Rosica joins this Petition individually, and on behalf of her minor children, as parent and natural guardian.

7. Petitioner, Aaron Bernstine (hereinafter referred to as “Petitioner Bernstine”), is an adult individual, parents and natural guardian of his minor children, [REDACTED] Petitioner is also a member of the Pennsylvania House of Representatives. Petitioner Bernstine’s minor children attend a public school district within the Commonwealth of Pennsylvania. Petitioner Bernstine resides with his minor children in Lawrence County, Commonwealth of Pennsylvania. Petitioner Bernstine

joins this Petition individually, and on behalf of his minor children, as parent and natural guardian.

8. Petitioner, Jason Saylor (hereinafter referred to as “Petitioner Saylor”), is an adult individual, parent and natural guardian of his minor child, [REDACTED]. Petitioner Saylor’s minor child attends a public school district within the Commonwealth of Pennsylvania. Petitioner Saylor resides with his minor child in Montgomery County, Commonwealth of Pennsylvania. Petitioner Saylor joins this Petition individually, and on behalf of his minor child, as parent and natural guardian. Petitioner Saylor is also an elected School Board member in the Perkiomen School District in Montgomery County, Pennsylvania.

9. Petitioner, Alexandra Pasternak, (hereinafter referred to as “Petitioner Pasternak”) is an adult individual, parent and natural guardian of her minor child, [REDACTED]. Petitioner Pasternak’s minor child attends a public school district within the Commonwealth of Pennsylvania. Petitioner Pasternak resides with her minor child in Delaware County, Commonwealth of Pennsylvania. Petitioner Pasternak joins this Petition individually, and on behalf of her minor child, as parent and natural guardian.

10. Petitioners, Rosica, Bernstine, Saylor, and Pasternak are collectively referred to as “Parent Petitioners.”

11. Petitioners' minor children [REDACTED]

[REDACTED], are collectively referred to as "Student Petitioners."

12. Petitioner, Barbara Gleim (hereinafter referred to as "Petitioner Gleim"), is an adult individual, taxpayer, and member of the Pennsylvania House of Representatives. Petitioner Gleim resides in Cumberland County, Commonwealth of Pennsylvania. Petitioner Gleim joins this Petition in her individual capacity as a resident and taxpayer in the Commonwealth of Pennsylvania.

Governmental Unit Whose Action is at Issue

13. Respondent, Office of the Governor of the Commonwealth of Pennsylvania, is the Executive Branch of the Commonwealth with the Governor, the Honorable Josh Shapiro, serving as the Chief Executive Officer of the Commonwealth and possessing the supreme powers of the Governor. The Office of the Governor is located in Harrisburg, Dauphin County, Commonwealth of Pennsylvania (hereinafter referred to as the Respondent "Governor"). *Pa. Const. Art. IV, §§ 1 and 2.*

14. Respondent, Pennsylvania Human Relations Commission, is an Independent Agency of the Commonwealth of Pennsylvania, organized and existing pursuant to the Pennsylvania Human Relations Act, *43 P.S. § 951,*

et seq., et al., with offices located in Harrisburg, Dauphin County, Commonwealth of Pennsylvania (hereinafter referred to as the “PHRC”).

15. Petitioners seek review, and declarations pertaining thereto, of PHRC Regulations §41.201 through §41.207, of Part II, Subpart A, Chapter 41, Subchapter D of the as more fully set forth herein (hereinafter “Regulation 41.201, et seq.”) added June 16, 2023, effective 60 days after publication, 53 Pa.B 3188. A true and correct copy of the Chapter D - Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions regulation is attached hereto as Exhibit “A.”

Material Facts Upon Which the Cause of Action is Based

16. The averments contain in the above paragraphs are incorporated by reference and made a part hereof as if fully set forth herein.

17. Article I, Section 25 of the Pennsylvania Constitution states as follows:

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Pa. Const., art. I, § 25.

18. Article I, Section 28 of the Pennsylvania Constitution states as follows:

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

Pa. Const., art. I, § 28.

19. Article II, Section 1 of the Pennsylvania Constitution states as follows:

The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

Pa. Const., art. II, § 1.

20. Article III, Section 1 of the Pennsylvania Constitution states as follows:

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

Pa. Const., art. III, § 1.

21. Article III, Section 6 of the Pennsylvania Constitution states as follows:

No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

Pa. Const., art. III, § 6.

22. Section 14 of Article III of the Pennsylvania Constitution states as follows:

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Pa. Const. art. III, § 14.

23. Only the General Assembly is vested with the constitutional authority to make public policy determinations in the Commonwealth of Pennsylvania.

24. The various departments, boards, and commissions established by the General Assembly do not have the authority to create, amend, or extend public policies inconsistent with the public policies approved by the General Assembly.

25. In August 2023, the Pennsylvania Human Relations Commission implemented regulations revising Subchapter D – Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions. *16 Pa. Code §§ 41.201 – 41.207.*

26. Section 41.201 – Purpose of Subchapter D states as follows:

This subchapter ensures that all unlawful discriminatory practices proscribed by the PHRA and all unfair educational practices proscribed by the PFEOA are interpreted and applied consistently. This subpart also ensures that all complaints filed with the PHRC are investigated consistent with the rules outlined in this subchapter.

16 Pa. Code § 41.201.

27. Section 41.204 – Definitions of Subchapter D has been revised

to read in relevant part as follows:

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Affectional or sexual orientation - Male, female or nonbinary heterosexuality, homosexuality, bisexuality or asexuality by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation.

Asexuality - The lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity.

Bisexuality - Affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

...

Core identity - Attributes that make a person unique as an individual such as fundamental beliefs and values, personal characteristics, and physical or mental attributes.

Gender identity or expression - Having or being perceived as having a gender-related identity, appearance, expression or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth. Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is part of a person's core identity.

Heterosexuality - Affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

Homosexuality - Affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

Intersex - Describes a person born with sex characteristics that are not typical for male or female bodies. Sex characteristics are physical features relating to sex, including chromosomes, genitals, hormones and other reproductive anatomy.

...

Sex assigned at birth - The assignment and classification of individuals at birth, including but not limited to male, female or intersex.

16 Pa. Code § 41.204.

28. Section 41.206 – Sex Discrimination of Subchapter D has been revised to read in relevant part as follows:

The term "sex" as used in the PHRA and the PFEOA includes all of the following:

- (1) Pregnancy.
- (2) Sex assigned at birth.
- (3) Gender, including a person's gender identity or gender expression.
- (4) Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality.
- (5) Differences of sex development, variations of sex characteristics or other intersex characteristics.

16 Pa. Code § 41.206.

29. In promulgating the revised regulations, the PHRC cited the statutory authority as follows:

The provisions of this Subchapter D added under sections 7(d) and 9(g) of the Pennsylvania Human Relations Act (43 P.S. §§ 957(d) and 959(q)) and under sections 6(6) and 7 of the Pennsylvania Fair Educational Opportunities Act (24 P.S. §§ 5006(6) and 5007), unless otherwise noted.

16 Pa. Code Part II, Subpt A. Ch 41, Subch D.

30. Section 952 – Findings and declaration of policy of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 – 963, states in relevant part as follows:

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of blindness or deafness of the user or because the user is a handler or trainer of guide or support animals.

(c) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

43 P.S. § 951(b) and (c).

31. Section 955 – Unlawful discriminatory practices of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 – 963, states in relevant part as follows:

It shall be unlawful discriminatory practice, . . . :

(a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.

43 P.S. § 955(a).

32. Section 956 – Pennsylvania Human Relations Commission of the Pennsylvania Human Relations Act, *43 P.S. §§ 951 – 963*, states in relevant part as follows:

(a) There shall be, and there is hereby established in the Governor’s Office a non-partisan, departmental administrative commission for the administration of this act, which shall be known as the “Pennsylvania Human Relations Commission,” and which is hereinafter referred to as the “Commission.”

. . .

(c) Subject to the provisions of this act, the Commission shall have all the powers and shall perform the duties generally vested in and imposed upon departmental administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 177), known as “The Administrative Code of one thousand nine hundred twenty-nine,” and its amendments, and shall be subject to all the provisions of such code which apply generally to departmental administrative boards and commissions.

43 P.S. § 956(a) and (c).

33. Section 957 – Powers and duties of the Commission of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 – 963, states in relevant part as follows:

The Commission shall have the following powers and duties:

...

(d) To adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this act.

43 P.S. § 957(d).

34. Section 958 – Educational Programs of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 – 963, states in relevant part as follows:

The Commission, in cooperation with the Department of Education, is authorized to recommend a multicultural educational program, designed for the students of the schools in this Commonwealth and for all other residents thereof, with emphasis on foreign cultural and language studies, as well as on the basic shared precepts and principles of United States culture, in order to promote cultural understanding and appreciation and to further good will among all persons, without regard to race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability.

43 P.S. § 958.

35. Section 5002 – Findings and declaration of policy of the Pennsylvania Fair Educational Opportunities Act, 24 P.S. §§ 5001 – 5010, states as follows:

(a) It is hereby declared to be the policy of this Commonwealth that all persons shall have equal opportunities for education regardless of their

race, religion, color, ancestry, national origin, sex, handicap or disability.

(b) Equality of educational opportunities requires that students, otherwise qualified, be admitted to certain educational institutions without regard for race, religion, color, ancestry, national origin, sex, handicap or disability.

(c) It is recognized that there is a fundamental American right for members of various religious faiths to establish and maintain educational institutions exclusively or primarily for students of their own religious faith. In such institutions students, otherwise qualified, should have equal opportunity to attend therein without discrimination because of race, color, ancestry, national origin, handicap or disability or, except as provided in section 9, sex.

(d) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

24 P.S. § 5002.

36. Section 5004 – Unfair educational practices of the Pennsylvania Fair Educational Opportunities Act, 24 P.S. §§ 5001 – 5010, states as follows:

(a) Except as provided in section 9, it shall be an unfair educational practice for an educational institution –

(1) To exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry, national origin, sex, handicap or disability, against any student or students seeking admission as students to such institutions: Provided, That it shall not be unfair educational practice for any educational institution to use criteria other than race, religion, color, ancestry, national origin, sex, handicap or disability in the admission of students.

24 P.S. § 5004(a)(1).

37. Pursuant to Section 5005 of the PFEOA, PHRC is vested with the authority to administer the PFEOA. 24 P.S. § 5005.

38. Section 5006 – Powers and duties of the commission of the Pennsylvania Fair Educational Opportunities Act, 24 P.S. §§ 5001 – 5010, states in relevant part as follows:

Without in anywise detracting from, or in derogation or diminution of the duties of the commission as set forth in the act of October 27, 1955 (P.L. 744), known as the “Pennsylvania Human Relations Act,” said commission is hereby vested with the following powers and duties -

. . .

(4) To formulate, recommend and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions, based upon race, religion, color, ancestry, national origin, sex, handicap or disability except religious discrimination in religious or denominational institutions and except, as to sex, as provided in section 9.

(5) To formulate policies to carry out the purposes of this act and to make recommendations to any or all educational institutions including under the provisions of this act to effectuate such policies.

(6) To adopt, amend, modify or rescind such rules and regulations as may be necessary to carry out the functions of the commission and to effectuate the purposes and provisions of this act.

(7) To initiate, receive and investigate and seek to adjust all complaints of unfair educational practices forbidden by this act.

24 P.S. § 5006(4 - 7).

39. Section 5008.1 – Judicial Review of the Pennsylvania Fair Educational Opportunities Act, 24 P.S. §§ 5001 – 5010, states in relevant part as follows:

Enforcement and judicial review shall be in accordance with section 10 of the act of October 27, 1955 (P.L. 744, No. 222), known as the “Pennsylvania Human Relations Act.”

24 P.S. § 5008.1.

40. The Pennsylvania Supreme Court in its recent seminal opinion in the case of *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 868-869, 2024 Pa. LEXIS 118, 2024 WL 318389, clearly and without reservation defined the term “sex” as follows:

1. either the male or female division of a species, especially as differentiated with reference to the reproductive functions.
2. the sum of the structural and functional differences by which the male and female are distinguished, or the phenomena or behavior dependent on these differences.”

Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs., 309 A.3d 808, 868-869, 2024 Pa. LEXIS 118, 2024 WL 318389, citing, *The Random House Dictionary of English Language, College Edition*, 1206, (Laurence Urdang ed. 1968).

41. The Court articulated that the term “sex” as used in Article 1, Section 28, of the Pennsylvania Constitution is defined as either male or female. [“The sum of the definitional parts of our Equal Rights Amendment is that the rights of an individual shall not be withheld or diminished on account

of membership in either the male or female division of our species.” *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 869, 2024 Pa. LEXIS 118, 2024 WL 318389.]

42. The Supreme Court went on to state “Three years after the adoption of Section 28, this Court, in the seminal case *Henderson v. Henderson*, 458 Pa. 97, 327 A.2d 60 (1974), expressed a clear understanding of the meaning of the text of the provision that “the law will not impose different benefits or burdens upon the members of a society based on the fact that they may be man or woman.” *Allegheny Reprod. Health supra at 874, citing, Henderson at 62.*

43. With respect to the Pennsylvania Human Relations Act, the Supreme Court stated “Like the Equal Rights Amendment, the PHRA, which predated it, uses the word ‘sex’ in its statutory proscription against discrimination. In *Cerra*, we definitively established that treating a woman differently based on pregnancy was to treat her differently based on sex. There is no reason to conclude, based on the text of Section 28, that there was an intention to give a different meaning to sex than the meaning given to it in the PHRA that preceded it.” [footnote omitted]. *Allegheny Reprod. Health supra at 876, citing, Cerra v. E. Stroudsburg Area Sch. Dist.*, 450 Pa.

207, 299 A.2d 277, 1973 Pa. LEXIS 596, 5 Fair Empl. Prac. Cas. (BNA) 480, 5 Empl. Prac. Dec. (CCH) P8410.

44. In reversing the longstanding jurisprudence of *Fischer v. Department of Public Welfare*, 509 Pa. 293, 502 A.2d 114 (Pa. 1985), the Supreme Court stated "... the *Fischer* Court ignored that reproductive functions, by definition, have historically been the primary basis for the distinction between men and women, i.e., physical characteristics that make one a member of the sex. The text of Section 28 does not support the exception created by *Fischer* that equality of rights can be denied or abridged based on a physical characteristic that makes a person a member of the male or female sex." *Allegheny Reprod. Health* supra at 876-877.

45. The Supreme Court went on to state "[w]e would have to conjure up a heretofore unimagined meaning of 'sex' as used in Section 28 to validate an interpretation of its protection that excepts out physical characteristics unique to one sex." *Allegheny Reprod. Health* supra at 885.

46. "[B]ased upon the unambiguous text of the Equal Rights Amendment, there is no room for a carve out for laws that differentiate between the sexes for any reason." *Allegheny Reprod. Health* supra at 886-887.

47. “[A] challenge to a law as violative of Section 28 begins with the premise that a sex-based distinction is presumptively unconstitutional. It is the government's burden to rebut the presumption with evidence of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy.” *Allegheny Reprod. Health supra* at 891.

48. “The judicial inquiry will be searching, and no deference will be given to legislative policy reasons for creating sex-based classifications. Given these parameters, we acknowledge that few, if any, sex-based conferrals of benefits or burdens will be sustainable.” *Allegheny Reprod. Health supra* at 891.

49. Section 14 of Article III of the Pennsylvania Constitution states as follows:

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Pa. Const. art. III, § 14.

50. In furtherance of its constitutional obligation, the General Assembly approved the Pennsylvania Public School Code of 1949. *24 P.S. §§ 1-101 et, seq. et al.*

51. Section 5-507 of the Public School Code vests in the Board of School Directors (hereinafter referred to as “school board”) “all necessary power and authority to comply with and carry out any or all of the provisions of this act.” *24 P.S. § 5-507.*

52. Section 5-510 of the Public School Code provides that the school board “... may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs and the conduct and deportment of all superintendents, teachers, and other appointees or employees during the time they are engaged in their duties to the district, as well as regarding the conduct and deportment of all pupils attending the public schools in the district ...” *24 P.S. § 5-510.*

53. Regarding extracurricular, co-curricular, and athletics, Section 5-511 of the Public School Code provides that the school board “shall prescribe, adopt, and enforce such reasonable rules and regulations as it may deem proper, regarding (1) the management, supervision, control, or prohibition of exercises, athletics, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities related to the school program, ...” *24 P.S. § 5-511.*

54. The Public School Code requires school districts to annually disclose to the Pennsylvania Department of Education interscholastic

athletic opportunities provided by the school districts. *24 P.S. §§ 16-1601-C, et seq.*

55. Section 16-1601-C of the Public School Code states as follows:

This article requires reporting by school entities of athletic opportunities afforded to male and female secondary school students.

24 P.S. §§ 16-1601-C.

56. The school districts' duty to disclose information pursuant to section 16-1603-C of the Public School Code is segregated into information regarding the "interscholastic athletic opportunities and treatment for male and female secondary school students." *24 P.S. §§ 16-1603-C.*

57. To assist school districts with the reporting of the information to the Department of Education, the Department is statutorily required to provide school districts with a disclosure form that requires school districts to identify the total number of male and female students, grades 7 through 12, during the prior school year; a list of each varsity, junior varsity, and freshman athletic team by gender for the prior school year; and, the total number of male and female students, grades 7 through 12, who participated in interscholastic athletics during the prior school year. *24 P.S. §§ 16-1604-C.*

58. With respect to restroom facilities, Section 7-740 – Water-closets or out-houses of the Public School Code states in relevant part as follows:

The board of school directors in every district shall, with every building used for school purposes, provide and maintain in a proper manner, a suitable number of water-closets or out-houses, not less than two for each building, where **both sexes** are in attendance. Such water-closets or out-houses shall be suitably constructed for, **and used separately by, the sexes.**

24 P.S. § 7-740. [emphasis added]

COUNT I – DECLARATORY JUDGMENT

Respondent’s Regulations violate Non-Delegation Doctrine.

59. The averments contained in the above paragraphs are incorporated by reference and made a part hereof as if fully set forth herein.

60. Article II, Section 1 of the Pennsylvania Constitution provides that,

The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

Pa. Const., art. II, § 1.

61. The mandate set forth in Article II, Section 1 of the Pennsylvania Constitution has resulted in what has been termed the “Non-Delegation Doctrine.”

62. The Non-Delegation Doctrine has been explained by Mr. Justice Wecht in the case of *Protz v. Workers’ Compensation Appeal Board (Derry Area School District)*, 639 Pa. 645, 161 A.3d 827, (Pa. 2017), as follows:

“Article II, Section 1 of the Pennsylvania Constitution states that ‘[t]he legislative power of this Commonwealth shall be vested in a General

Assembly, which shall consist of a Senate and a House of Representatives.’ Pa. Const., art. II, § 1. That is why, when the General Assembly empowers some other branch or body to act, our jurisprudence requires ‘that the basic policy choices involved in ‘legislative power’ actually be made by the [l]egislature as constitutionally mandated.’ *Tosto v. Pa. Nursing Home Loan Agency*, 460 Pa. 1, 331 A.2d 198, 202 (1975). This constraint serves two purposes. First, it ensures that duly authorized and politically responsible officials make all of the necessary policy decisions, as is their mandate per the electorate. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 291 (1975) (plurality opinion). And second, it seeks to protect against the arbitrary exercise of unnecessary and uncontrolled discretionary power.”

Protz, 124 A.3d at 420.

63. Pursuant to the Non-Delegation Doctrine, the General Assembly is prohibited from granting, “to any other branch of government or to any other body or authority,” the power to make law. *Blackwell v. Com., State Ethics Com’n*, 567 A.2d 630, 636 (Pa. 1989); see also *State Bd. of Chiropractic Exam’rs v. Life Fellowship of Pa.*, 272 A.2d 478, 480 (Pa. 1971).

64. The General Assembly is the sole branch of government vested with the authority, “to make laws, and not to make legislators.” John Locke, *Second Treatise of Government*, 87 (R. Cox Ed. 1982); see also *Dep’t of Transp. v. Ass’n of Am. Railroads*, 135 S.Ct. 1225 (2015) (Alito, J. concurring) (“[t]he principle that Congress cannot delegate away its vested power exists to protect liberty.”)

65. Despite the principle that the General Assembly has the power to make law, and it cannot constitutionally delegate such authority to any other branch of government, the General Assembly may still delegate authority, “in connection with the execution and administration of a law to an independent agency or an executive branch agency where the General Assembly first establishes primary standards and imposes upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the enabling legislation.” *Blackwell*, 567 A.2d at 637.

66. In such a circumstance where the General Assembly chooses to delegate authority, two critical limitations apply.

67. The first is that “the basic policy choices must be made by the [l]egislature;” and the second is that “the legislation must contain adequate standards which will guide and restrain the exercise of the delegated administrative functions.” *Blackwell*, 567 A.2d at 637; *citing Gilligan v. Pa. Horse Racing Commission*, 422 A.2d 487, 489 (Pa. 1980).

68. The General Assembly has not delegated any authority to the Pennsylvania Human Relations Commission to amend and expand the definition of “sex” or “gender” within the Commonwealth of Pennsylvania.

69. In 1955, the General Assembly established the Pennsylvania Human Relations Commission (“PHRC”). 43 P.S. §§ 951, *et seq.*

70. In establishing the PHRC, the General Assembly declared it to be the public policy of the Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their sex.

71. Long before the creation of the PHRC, the General Assembly and the Courts of this Commonwealth, including the Supreme Court, have consistently recognized that the terms “gender” and “sex” exclusively refer to “male” and “female,” “men” and “women,” and “boys” and “girls” as determined by the individual’s biological chromosomes and genitalia possessed at birth.

72. Since the creation of the PHRC, the General Assembly and the Courts of this Commonwealth, including the Supreme Court, have consistently recognized that the terms “gender” and “sex” are exclusively defined to mean “males” and “female,” “men” and “women,” and “boys” and “girls” as determined by the individual’s biological chromosomes and genitalia at birth.

73. In 2022, the PHRC declared and implemented a new public policy when it promulgated Subchapter D – Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions. *16 Pa. Code §§ 41.201 – 41.207.*

74. This new public policy no longer recognizes the definition of the term “sex” as determined by the individual’s biological chromosomes and genitalia at birth.

75. This new public policy creates subclassifications and new classifications of sex not based upon the individual’s biological chromosomes and genitalia at birth. No such action has ever been taken by the General Assembly of this Commonwealth.

76. One new subclassification is to be determined, at least in part, by the individual’s “inclination, practice, identity or expression” of their real or perceived affectional or sexual orientation. *16 Pa. Code §§ 41.204 Affectional or sexual orientation.*

77. Another new subclassification is to be determined, at least in part, by the individual’s “lack of sexual attraction to other, or low or absent interest in or desire for sexual or romantic activity.” *16 Pa. Code §§ 41.204 Asexuality.*

78. These new subclassifications are to be determined, at least in part, by the individual’s “[a]ffectional, emotional, or physical attraction or behavior which is directed towards person of either gender.” *16 Pa. Code §§ 41.204 Bisexuality.*

79. Each of the new classifications must also consider the individual's "[a]ttributes that make a person unique as an individual such as fundamental beliefs and values, personal characteristics, and physical or mental attributes." *16 Pa. Code §§ 41.204 Core identity.*

80. Pursuant to these newly adopted regulations, the individual's biological chromosomes and genitalia are irrelevant to determining an individual's sex, which is, under the new subclassifications to be determined, at least in part, by the individual "having or being perceived as having a gender-related identify, appearance, expression or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth." *16 Pa. Code §§ 41.204 Gender identity and expression.*

81. "Gender identity and expression may be demonstrated by 'consistent' and 'uniform assertion' of the gender identity "or any other evidence" that the gender identity is part of a person's core identity." *16 Pa. Code §§ 41.204 Gender identity and expression.*

82. Pursuant to Section 41.206 – Sex discrimination, the PHRC has redefined the term "sex," under the PHRA and the PFEOA, as an individual's sex assigned at birth; an individual's gender, including a person's identity or gender expression; an individual's affectional or sexual orientation, including, heterosexuality, homosexuality, bisexuality and asexuality; and, an

individual's differences of sex development, variations of sex characteristics or other intersex characteristics. *16 Pa. Code §§ 41.206.*

83. District Petitioners, as public school districts, employers, and owners of facilities open to the public, are covered by the provisions of the Pennsylvania Human Relations Act and the Pennsylvania Fair Educational Opportunities Act, including, but not limited to, the non-discrimination provisions related to sex.

84. Parent Petitioners, individually and on behalf of their minor children, who are enrolled in public school districts, are subject to the provisions of the Pennsylvania Human Relations Act and the Pennsylvania Fair Educational Opportunities Act, including, but not limited to, the non-discrimination provisions related to sex.

85. Student Petitioners who are enrolled in public school districts are covered by the provisions of the Pennsylvania Human Relations Act and the Pennsylvania Fair Educational Opportunities Act, including, but not limited to, the non-discrimination provisions related to sex.

86. The PHRC regulations are in direct conflict with definition of "sex" set forth by the Pennsylvania Supreme Court in its recent seminal opinion in the case of *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 868-869, 2024 Pa. LEXIS 118, 2024 WL 318389.

87. *The Supreme Court* clearly and without reservation defined the term “sex” as follows:

1. either the male or female division of a species, especially as differentiated with reference to the reproductive functions.
2. the sum of the structural and functional differences by which the male and female are distinguished, or the phenomena or behavior dependent on these differences.”

Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs., 309 A.3d 808, 868-869, 2024 Pa. LEXIS 118, 2024 WL 318389, citing, *The Random House Dictionary of English Language, College Edition*, 1206, (Laurence Urdang ed. 1968).

88. Further, the PHRC regulations usurp the statutory authority of the Legislature as granted by the General Assembly through the Pennsylvania Public School Code, and as such, Petitioners assert the constitutional challenges set forth herein.

89. Section 5-507 of the Public School Code vests in the Board of School Directors “all necessary power and authority to comply with and carry out any or all of the provisions of this act.” 24 P.S. § 5-507.

90. The General Assembly granted the Board of School Directors the authority to “adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs and the conduct and deportment of all superintendents, teachers, and other appointees or employees during the time they are engaged in their

duties to the district, as well as regarding the conduct and deportment of all pupils attending the public schools in the district ...” *24 P.S. § 5-510.*

91. The General Assembly further granted Boards of School Directors the authority to “prescribe, adopt, and enforce such reasonable rules and regulations as [they] may deem proper, regarding (1) the management, supervision, control, or prohibition of exercises, athletics, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities related to the school program, ...” *24 P.S. § 5-511.*

92. Under the PHRC regulations, a Board of School Directors is engaged in prohibited discrimination if the school district complies with the requirements of Section 7-740 of the Public School Code and separates its bathroom facilities into separate male and female bathroom. *24 P.S. § 7-740.*

93. Under the PHRC regulations, the Board of School Directors is engaged in prohibited discrimination if the school district complies with the requirements of Section 16-1601-C of the Public School Code and separates and reports its interscholastic athletic program as male and female programs. *24 P.S. §§ 16-1601-C.*

94. The above examples are but a few of the countless examples of alleged discrimination created by the public policy declaration contained in the PHRC regulations.

COUNT II – DECLARATORY JUDGMENT
**Respondent’s Regulations violate Article 1, Section 28,
of the Pennsylvania Constitution.**

95. The averments contained in the above paragraphs are incorporated by reference and made a part hereof as if more fully set forth herein.

96. As cited above, the Pennsylvania Supreme Court has clearly stated that:

“based upon the unambiguous text of the Equal Rights Amendment, there is no room for a carve out for laws that differentiate between the sexes for any reason.” *Allegheny Reprod. Health supra* at 886-887.

97. There are but two sexes in the Commonwealth of Pennsylvania, “either the male or female division of a species.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 868-869, 2024 Pa. LEXIS 118, 2024 WL 318389, citing, *The Random House Dictionary of English Language, College Edition, 1206, (Laurence Urdang ed. 1968).*

98. Through its regulations, the HRC has conjured up a heretofore unimagined meaning of “sex.”

99. The PHRC newly created meaning of “sex” contained within the PHRC regulations has been accomplished by means in direct contradiction to Article 1, section 28 of the Pennsylvania Constitution.

100. Under the PHRC regulations, there are males, females or nonbinary heterosexual, homosexual, bisexual or asexuality individuals who by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation. *16 Pa. Code Part II, Subpt A. Ch 41, Subch D, Affectional or sexual orientation.*

101. For example, under the PHRC regulations, for sex discrimination purposes, a male, female or nonbinary individual’s sex is determined, at least in part, by the individual’s affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender (heterosexual); affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender (*homosexual*); *affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender (bisexual)*; or, their lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity (*asexual*).

102. Under the PHRC regulations, an individual's sex is not necessarily determined at birth based upon the individual's biological chromosomes and genitalia.

103. Under the PHRC regulations, an individual's sex is not determined at some undefined point in time after birth based at least in part upon personal attributes that make the individual unique such as fundamental beliefs and values, personal characteristics, and physical or mental attributes; and/or the individual *having or being perceived* as having a gender-related identity, appearance, expression or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth. Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is part of a person's core identity. *16 Pa. Code § 41.204.*

104. Under the PHRC regulations, an individual's sex for purposes of a valid sex discrimination charge can change over time from the birth of the individual through the individual's death depending upon the individual's "fundamental beliefs and values, personal characteristics, and physical or mental attributes." *16 Pa. Code § 41.204.*

105. Under the PHRC regulations, an individual's sex for purposes of a prima facie sex discrimination charge can change over time from the birth

of the individual through the individual's death depending upon the accurate or perceived "gender-related identity, appearance, expression or behavior" of the individual. *16 Pa. Code § 41.204.*

106. In order to establish the individual's sex, the individual is required to demonstrate "by consistent and uniform assertion" or "any other evidence" establishing the individual's sex. *16 Pa. Code § 41.204.*

107. The PHRC regulations no longer consider the individual's biological chromosomes and genitalia at birth a relevant factor in determining an individual's sex.

108. As indicated above, the Supreme Court "would have to conjure up a heretofore unimagined meaning of 'sex' as used in Section 28 to validate an interpretation of its protection that excepts out physical characteristics unique to one sex." *Allegheny Reprod. Health supra* at 885.

109. "[B]ased upon the unambiguous text of the Equal Rights Amendment, there is no room for a carve out for laws that differentiate between the sexes for any reason." *Allegheny Reprod. Health supra* at 886-887.

110. "[A] challenge to a law as violative of Section 28 begins with the premise that a sex-based distinction is presumptively unconstitutional. It is the government's burden to rebut the presumption with evidence of a

compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy.” *Allegheny Reprod. Health supra* at 891.

STATEMENT OF RELIEF SOUGHT

WHEREFORE, Petitioners respectfully request an Order of Court:

1. declaring that Regulations amending Subchapter D – Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions, as published in the Pennsylvania Bulletin, *53 Pa.B. 3188*, violate the Non-Delegation Doctrine of the Pennsylvania’s Constitutional and are thus void *ab initio*.

2. declaring that Regulations amending Subchapter D – Protected Classes of Title 16 – Community Affairs, Part II – Governor’s Office, Subpart A – Human Relations Commission, Chapter 41 – Preliminary Provisions, as published in the Pennsylvania Bulletin, *53 Pa.B. 3188*, violate Article I, Section 28 of the Pennsylvania Constitutional and are thus void *ab initio*.

3. such other relief as this Honorable Court may deem appropriate under the circumstances.

4. subsequent to making the Declaration sought above, to issue any Order necessary to implement and enforce the Court's Declaration pursuant to the Declaratory Judgment Act.

5. requiring Respondents to pay the costs of these proceedings.

Respectfully Submitted,

**DILLON, MCCANDLESS, KING,
COULTER & GRAHAM, L.L.P.**

Dated: March 6, 2025

By: /s/ Thomas W. King, III

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*Special Counsel for the Thomas
More Society*

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Thomas W. King, III
Thomas W. King, III

VERIFICATION

I, Aaron Bernstine, have read the foregoing Petitioners' Petition for Review, and do hereby depose and state that the statements herein are true and correct to the best of my personal knowledge, information, and belief.

This statement and verification are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: March 6, 2025



Aaron Bernstine

VERIFICATION

I, Beth Ann Rosica, have read the foregoing Petitioners' Petition for Review, and do hereby depose and state that the statements herein are true and correct to the best of my personal knowledge, information, and belief.

This statement and verification are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: March 6, 2025

Beth Ann Rosica


Beth Ann Rosica

VERIFICATION

I, Alexandra Pasternak, have read the foregoing Petitioners' Petition for Review, and do hereby depose and state that the statements herein are true and correct to the best of my personal knowledge, information, and belief.

This statement and verification are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: March 6, 2025


Alexandra Pasternak

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Thomas W. King, III
Thomas W. King, III

16 Pa. Code Part II, Subpt A, Ch 41, Subch D

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16, Part II, Subpt A, Ch 41, Subch D Note

Statutory Authority

Authority

The provisions of this Subchapter D added under sections 7(d) and 9(g) of the Pennsylvania Human Relations Act ([43 P.S. §§ 957\(d\)](#) and [959\(g\)](#)) and under sections 6(6) and 7 of the Pennsylvania Fair Educational Opportunities Act ([24 P.S. §§ 5006\(6\)](#) and [5007](#)), unless otherwise noted.

History

Source

The provisions of this Subchapter D added June 16, 2023, effective 60 days after publication, [53 Pa.B. 3188](#), unless otherwise noted.

End of Document

16 Pa. Code § 41.201

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§ 41.201. Purpose.

This subchapter ensures that all unlawful discriminatory practices proscribed by the PHRA and all unfair educational practices proscribed by the PFEOA are interpreted and applied consistently. This subpart also ensures that all complaints filed with the PHRC are investigated consistent with the rules outlined in this subchapter.

End of Document

16 Pa. Code § 41.202

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§ 41.202. Construction.

This subchapter shall be construed liberally for the accomplishment of the purposes of the PHRA and the PFEOA.

End of Document

16 Pa. Code § 41.203

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§ 41.203. Enforcement.

This subchapter shall be subject to and enforced in accordance with the PHRA, the PFOA, Chapter 42 (relating to Special Rules of Administrative Practice and Procedure) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

End of Document

16 Pa. Code § 41.204

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§ 41.204. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Affectional or sexual orientation—Male, female or nonbinary heterosexuality, homosexuality, bisexuality or asexuality by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation.

Asexuality—The lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity.

Bisexuality—Affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

Complainant—A person, including the PHRC or the Attorney General, who files a complaint with the PHRC under the PHRA or the PFEOA.

Complaint—A complaint filed with the PHRC under the PHRA or the PFEOA.

Core identity—Attributes that make a person unique as an individual such as fundamental beliefs and values, personal characteristics, and physical or mental attributes.

Ethnic characteristics—Physical characteristics such as skin and hair color, body size and facial features typical of persons of a particular cultural or social background; linguistic characteristics such as language or dialect; behavioral or cultural characteristics such as religion or customs; and environmental characteristics such as living in the same area or region.

Gender identity or expression—Having or being perceived as having a gender-related identity, appearance, expression or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth. Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is part of a person's core identity.

Heterosexuality—Affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

§ 41.204. Definitions.

Homosexuality—Affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

Intersex—Describes a person born with sex characteristics that are not typical for male or female bodies. Sex characteristics are physical features relating to sex, including chromosomes, genitals, hormones and other reproductive anatomy.

PFEOA—The Pennsylvania Fair Educational Opportunities Act ([24 P.S. §§ 5001—5010](#)).

PHRA—The Pennsylvania Human Relations Act ([43 P.S. §§ 951—963](#)).

PHRC—The Pennsylvania Human Relations Commission.

Person—As defined in section 4(a) of the PHRA ([43 P.S. § 954\(a\)](#)).

Pregnancy—Includes all of the following:

- (1) The use of assisted reproductive technology.
- (2) The state of being in gestation.
- (3) Childbirth.
- (4) Breastfeeding.
- (5) The postpartum period after childbirth.
- (6) Medical conditions related to pregnancy.

Religious beliefs—Include the following:

- (1) Moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.
- (2) The beliefs a complainant professes without regard to whether a religious group espouses these beliefs.

Respondent—The person against whom a complaint was filed with the PHRC under the PHRA or the PFEOA.

Sex assigned at birth—The assignment and classification of individuals at birth, including but not limited to male, female or intersex.

Traits associated with race—Include, but are not limited to, hair texture and protective hairstyles, such as braids, locks and twists.

16 Pa. Code § 41.205

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§ 41.205. Religious creed discrimination.

- (a)** The term “religious creed” as used in the PHRA and the PFEOA includes all aspects of religious observance, practice or belief.
- (b)** The term “religious creed” as used in the PHRA and the PFEOA includes the failure to provide a reasonable accommodation for a religious observance or practice.
- (c)** An employer, housing provider, public accommodation or person covered under the PHRA and the PFEOA may assert an undue hardship defense to the request for a reasonable accommodation.

End of Document

16 Pa. Code § 41.206

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§ 41.206. Sex discrimination.

The term “sex” as used in the PHRA and the PFEOA includes all of the following:

- (1) Pregnancy.
- (2) Sex assigned at birth.
- (3) Gender, including a person’s gender identity or gender expression.
- (4) Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality.
- (5) Differences of sex development, variations of sex characteristics or other intersex characteristics.

End of Document

16 Pa. Code § 41.207

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§ 41.207. Race discrimination.

The term “race” as used in the PHRA and the PFEOA includes all of the following:

- (1) Ancestry, national origin or ethnic characteristics.
- (2) Interracial marriage or association.
- (3) Traits associated with race.
- (4) Hispanic ancestry, national origin or ethnic characteristics, including, but not limited to, persons of Mexican, Puerto Rican, Central or South American or other Spanish origin or culture.
- (5) Persons of any other national origin or ancestry as specified by a complainant in a complaint.

End of Document